



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170909

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services ["County"] in regard to FoodShare benefits ["FS"], a Hearing was held via telephone from Madison, Wisconsin on June 7, 2016. At petitioner's request Hearings scheduled for May 5, 2016, April 7, 2016, March 15, 2016, February 9, 2016, and January 14, 2016 were rescheduled. The Hearing for this matter was held at the same time as the Hearing for the following 2 closely related matters concerning the same petitioner: CCO/170911; and, MOP/170912.

The issue for determination is whether it was correct to establish the following 4 Claims against petitioner for alleged overpayments of FS in the total amount of \$9,755.00 spanning the time period March 12, 2012 to August 31, 2015:

- (I) Claim Number [REDACTED]; March 12, 2012 to February 28, 2013; \$2,329.00;
- (II) Claim Number [REDACTED]; March 1, 2013 to February 28, 2014; \$3,119.00;
- (III) Claim Number [REDACTED]; March 1, 2014 to November 30, 2014; \$2,939.00; and,
- (IV) Claim Number [REDACTED]; January 6, 2015 to August 31, 2015; \$1,368.00.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] Fraud Investigator
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
 Sean P. Maloney
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]; 23 years old) is a resident of Dane County, Wisconsin.
2. The County established the following 4 Claims against petitioner for alleged overpayments of FS in the total amount of \$9,755.00 spanning the time period March 12, 2012 to August 31, 2015:
 - (I) Claim Number [REDACTED]; March 12, 2012 to February 28, 2013; \$2,329.00;
 - (II) Claim Number [REDACTED]; March 1, 2013 to February 28, 2014; \$3,119.00;
 - (III) Claim Number [REDACTED]; March 1, 2014 to November 30, 2014; \$2,939.00; and,
 - (IV) Claim Number [REDACTED]; January 6, 2015 to August 31, 2015; \$1,368.00.
 Exhibit A1.
3. The alleged FS overpayments in *Finding of Fact* #2, above, are based on the allegation that petitioner had income which was not budgeted in the FS calculations because it was not reported by petitioner. Exhibits B, #1, #2, #3, #4, #5, #6, #7, #8, #9 & #10.
4. The County did not perform a calculation to arrive at the amount of the FS overpayments; instead, “a complete overpayment of all benefits received was assessed” “[d]ue to unavailable financial information.” Exhibit A4.

DISCUSSION

The County has presented convincing evidence that petitioner had substantial income (perhaps from illegal activity) during the time period in question that was not report. Exhibits B, #1, #2, #3, #4, #5, #6, #7, #8, #9 & #10. The County contends that a “total benefit recovery from 3/1/2012 to 8/31/2015” is justified because petitioner has not provided “full financial disclosure” (although petitioner has provided some financial information).¹ Exhibit #1. The County cites no authority for this other than an August 25, 2014 e-mail from the Wisconsin Department of Health Services [“DHS”] CARES Call Center. Exhibit F.

Federal law requires that an overpayment be calculated by determining the correct amount a household was entitled to received (using income that the household failed to report) and then subtracting this from the amount it actually received. 7 C.F.R. §§ 273.18(c)(1)(ii)(A), (B) & (C) (2015); See also, DHA Case No. FOP/162449 (Wis. Div. Hearings & Appeals Proposed Decision January 20, 2015; Final Decision April 30, 2015) (DHS); and, DHA Case No. FOP/162890 (Wis. Div. Hearings & Appeals Proposed Decision February 19, 2015; Final Decision April 30, 2015) (DHS). An e-mail from the DHS CARES Call Center cannot change this. Further, state policy itself requires that income “reported or required to

¹ In a letter dated May 4, 2016 (on the 1st page; on other pages it is dated June 6, 2016) petitioner states: “[T]here may be a couple of times when I should’ve reported additional money for the most part I was within the guidelines and my income was within the guidelines of the benefit programs. Maybe there are a few months where I should pay back benefits, but not for every month and not for the sum of \$50,000.”

be reported for each month of the overissuance period” be used when calculating the amount of an FS overpayment. (underline added) *FoodShare Wisconsin Handbook* ["FWH"] 7.3.2.1.

Nothing prevents the County from pursuing FS recovery premised upon a new Notice of Overpayment with a correct basis in law and fact for the claim.

CONCLUSIONS OF LAW

For the reasons discussed above, the County may not, at this time, establish the 4 Claims against petitioner outlined in *Findings of Fact* #2, above, for alleged overpayments of FS in the total amount of \$9,755.00 spanning the time period March 12, 2012 to August 31, 2015.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to the County and that, within 10 days of the date of this *Decision*, the County not establish the 4 Claims against petitioner outlined in *Findings of Fact* #2, above, for alleged overpayments of FS in the total amount of \$9,755.00 spanning the time period March 12, 2012 to August 31, 2015 and send a letter to petitioner stating that it has done this.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

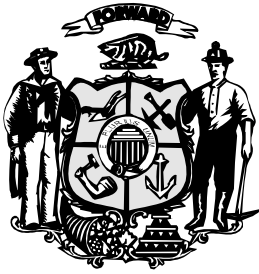
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of June, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 21, 2016.

Dane County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability